

CHAPTER 1 GENERAL

1-1. Policy. The policy of the USACE is to plan and execute ordnance and explosives (OE) activities in a manner which fully meet customers' expectations of quality, timeliness, and cost effectiveness within the bounds of legal responsibility. An acceptable level of quality does not imply perfection; however, there should be no compromise of functional, health, or safety requirements. Adherence to the Quality Management principles outlined in Engineer Regulation (ER) 5-1-11, Program and Project Management and ER 1110-1-12, Quality Management, will contribute to achieving this goal. OE response procedures must be formulated to ensure harmony with the USACE Strategic Vision and should be executed in concert with activities presented in other USACE guidance.

1-2. Program Overview.

a. Description of the OE Response Process.

(1) Formerly Used Defense Sites (FUDS). An OE response is an action taken to reduce the risk to human health and the environment from exposure to OE resulting from past Department of Defense (DOD) operations at a site. The OE response process at FUDS is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). The OE response process at FUDS typically follows the non-time critical removal action process (NTCRA). This process is discussed in detail in Chapters 6 through 17 of this pamphlet. Emergency and time critical removal actions (TCRA) may be conducted during the OE response process, as presented in further detail in Chapter 5.

(2) Active and Transferring Installations. OE response actions at active installations are conducted under the Installation Restoration Program (IRP). OE response actions at transferring installations are conducted under the Base Realignment and Closure (BRAC) program. The installation is responsible for determining the OE response action at active and transferring installations.

b. OE Response Objective. The primary objective of an OE response action is to reduce the risk to the general public in a manner that ensures the safety of OE response specialists, is cost-effective, and complies with all applicable legal requirements. In certain circumstances, it may be appropriate to seek a waiver of certain legal requirements. The process for seeking such waivers will be initiated only after consultation with the OE Mandatory Center of Expertise (OE MCX) and the Office of Counsel (OC) supporting the OE MCX. The requesting agency will submit a letter documenting the policy/procedures that require a waiver. The letter should

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present the benefits of applying the waiver, if approved. The letter should be submitted to the OC supporting the OE MCX for resolution.

c. Execution of OE Response Activities. DOD is the lead agency for all OE response actions. Responsibility for executing an OE response action depends on whether the site is a FUDS or an active or transferring installation.

(1) FUDS.

(a) OE response actions at sites that were contaminated while under the jurisdiction of DOD, but which subsequently have been transferred out of DOD control (i.e., FUDS) are conducted under the Defense Environmental Restoration Program-FUDS (DERP-FUDS). OE response actions at FUDS are the subject of this pamphlet.

(b) Authority for executing OE response actions at FUDS has been delegated to USACE by DOD through Headquarters, Department of the Army (HQDA).

(2) Active and Transferring Installations. USACE may or may not be involved in OE response actions at active and transferring installations. This pamphlet does not discuss these programs specifically; however, the phases of an OE response action at these sites may be similar to those discussed for the FUDS program, depending on the installation's requirements.

1-3. OE Response Regulatory Authorities.

a. Major Subordinate Commands (MSC), district commands, OE Design Centers, and the OE MCX will comply with all applicable laws and regulations. The district, which serves as the Project Manager (PM), will provide general legal services. For FUDS projects, the determination of the laws and regulations governing environmental aspects for any specific OE project will be made in consultation with the OC supporting the OE MCX. In the event of any sort of dispute with a regulator over the governing laws on a FUDS project, the district providing general legal services will represent the agency in negotiations or adversary proceedings. For non-FUDS projects performed by the USACE under a different program or authority (i.e., BRAC, IR, Work for Others), the appropriate legal representative of the sponsoring agency will be the lead counsel for all legal matters, although USACE counsel will be available for consultation. OE response actions will be executed in compliance with 40 CFR Part 260 et al - Military Munitions Rule; the OE requirements of DOD 6055.9-STD; Army Regulation (AR) 385-61; AR 385-64; Department of the Army Pamphlet (DA Pam) 385-61; HQDA LTR 385-98-1 "Explosives Safety Policy for Real Property Containing Conventional Ordnance and Explosives"; and any other applicable OE publications listed at Appendix A. All USACE elements will comply with DOD and DA safety and health regulations and procedures. The following paragraphs present an overview of the legal authorities governing OE response actions.

b. CERCLA. CERCLA was enacted by Congress in 1980 and subsequently amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). CERCLA authorizes federal action to respond to the release or threatened release of hazardous substances into the environment, or a release or threat of release of a pollutant or contaminant into the environment that may present an imminent or substantial danger to the public health or welfare. The CERCLA process is intended to ensure that contaminated sites are cleaned up in a timely manner, cleanup objectives are reasonable and achievable, and the affected community participates in selection of the removal measure(s), as appropriate for the site. All references to CERCLA in this document refer to CERCLA as amended by SARA.

(1) NCP. The NCP, which was established in 1972 under the Clean Water Act and revised in February 1990, designated DOD as the removal response authority for incidents involving munitions. The NCP presents a procedural and organizational framework for preparing and conducting response actions.

c. DERP.

(1) DERP was established by Congress in 1986 under Chapter 160 of SARA. DERP directed the Secretary of Defense to “carry out a program of environmental restoration” at facilities under the jurisdiction of the Secretary of Defense.

(2) The three program goals of DERP, as stated in 10 U.S.C. 2701, are:

(a) Identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

(b) Correction of other environmental damage, such as the detection and disposal of unexploded ordnance (UXO), which create an imminent and substantial endangerment to the public health, its welfare or to the environment.

(c) Demolition and removal of unsafe buildings and structures, including buildings and structures of the DOD at property formerly used by or under the jurisdiction of the Secretary of Defense.

(3) DERP includes the FUDS program and the IRP. These programs are discussed in the following paragraphs.

(a) FUDS Program. The objective of the DERP-FUDS program is to reduce, in a timely, cost-effective manner, the risk to human health, safety and the environment of hazards which have resulted from past DOD activities. The DERP-FUDS program is authorized under DERP and CERCLA Section 104, in which the Secretary of Defense is authorized to conduct response actions at sites that were contaminated while under the jurisdiction of the DOD or its predecessor agencies. The Secretary of the Army, acting through USACE, serves as the DOD executive

agent for environmental restoration activities on FUDS, including OE response actions, and must ensure these activities are executed in accordance with DERP.

(b) IRP. The IRP addresses contamination resulting from past operations at active installations. The IRP is a comprehensive program to identify, investigate, and clean up such contamination. The IRP does not address maintenance, repair, remediation, or clearing of active ranges or disposal sites at active installations.

d. BRAC. The Base Realignment and Closure Act of 1988 (Public Law 100-526, 102 Stat. 2623) and the Defense Base Realignment and Closure Act of 1990 (Public Law 101-510, 104 Stat. 1808) provide for a recurring, systematic review and evaluation of all installations operated by the U.S. Armed Forces. The purpose of the process is to create operational, economic, and strategic efficiency by recommending closure and/or realignment of installations to best serve the defense needs of the United States.

e. Resource Conservation and Recovery Act (RCRA).

(1) For OE response actions, RCRA will apply mainly as an Applicable or Relevant and Appropriate Requirement (see paragraph 1-3g). OE recovered from an OE response action on a FUDS, if transported off-site, may be a solid waste. This is determined on a site-specific basis and could require application of other requirements.

(2) On-site treatment of discarded munitions on FUDS are not subject to RCRA permitting and manifesting requirements. When OE is moved off-site, however, it must be managed in accordance with all applicable RCRA and Department of Transportation (DOT) requirements.

f. Environmental Protection Agency (EPA) Military Munitions Rule. The EPA Military Munitions Rule amends 40 CFR 260-266, and 270. This Rule was implemented to clarify the application of RCRA requirements to military munitions. Six major issues are addressed:

(1) Conditions specifying when military munitions become subject to regulation as a solid waste or hazardous waste under RCRA.

(2) The application of RCRA hazardous waste standards to the use of military munitions in weapons testing and military training exercises.

(3) The standards applicable to emergency responses to incidents involving military munitions and explosives.

(4) The applicability of RCRA requirements to unexploded ordnance (UXO) and environmental contamination at closed or transferred military firing ranges.

(5) Management standards necessary for the protection of human health and environmental quality during the transportation and storage of military munitions determined to be hazardous waste.

(6) Hazardous waste manifesting requirements during transportation on public or private right-of-ways on or along the borders of contiguous properties under the control of the same person.

g. Applicable or Relevant and Appropriate Requirements (ARARs).

(1) OE response actions must comply with all ARARs. Applicable requirements are cleanup standards, standards of control, and other substantive environmental protection requirements promulgated under federal or state law that specifically address a hazardous substance, pollutant, contaminant, response action, location or other circumstance found at a CERCLA site. Relevant and appropriate requirements are cleanup standards that, while not “applicable”, address situations sufficiently similar to those encountered at a CERCLA site that their use is well-suited to the particular site.

(2) When selecting the most suitable OE response action, ARARs must be identified and considered on a site-specific basis. OE response actions will attain ARARs under federal or state laws to the extent practicable considering the urgency of the situation and the scope of the removal. For an NTCRA, the district must identify potential ARARs during the Engineering Evaluation/Cost Analysis (EE/CA) planning process and comply with them whenever possible. For TCRAs, the deferral of ARARs may be warranted.